

§ 301 (k) has limited the situations for which it will direct punishment for holding misbranded articles for sale, I cannot agree that we should rewrite § 301 (a) so as to broaden its coverage. If Congress left a hiatus, Congress should fill it if it so desires. While I do not doubt the wisdom of separating these offenses as Congress has here done, we must remember that there are dangers in splitting up one and the same transaction into many offenses. See *Blockberger v. United States*, 284 U. S. 299, 304-305.

"These are serious offenses. While petitioner was fined only \$200 on each count, or a total of \$4,000, the maximum allowable punishment was \$1,000 per count and imprisonment for one year, or for three years under other circumstances. § 303 (a). The approach of Congress in this field of penal regulation has been cautious. The language used by Congress in the present law in defining new offenses has been marked by precision. I think we should exercise a similar caution before reading into the 'introduction to interstate commerce' offense, conduct which patently fits into the 'held for sale' offense.

"I would reverse the judgment here insofar as it rests on the thirteen counts in which the Government charged offenses under § 301 (a) and failed to prove them."

2581. Misbranding of Gotu Kola tablets, fenugreek tea, Bolax tablets, Garlic Plus tablets, Ribotabs tablets, Minerals Plus tablets, sarsaparilla tea, Everm wheat germ oil capsules, Kordel tablets, Ormotabs tablets, Cetabs tablets, Fero-B-Plex tablets, Kordel-A capsules, Niamin tablets, Papaya Plus tablets, and Matto tablets. U. S. v. 134 Packages, etc. (and 3 other seizure actions). (F. D. C. Nos. 11810, 15807, 15916, 15926. Sample Nos. 49028-F, 28330-H, 28332-H, 28335-H, 28336-H, 28338-H, 28340-H, 28363-H to 28371-H, incl., 28373-H to 28376-H, incl., 28390-H, 28392-H, 28394-H to 28396-H, incl., 28398-H, 29402-H to 29412-H, incl.)

LIBELS FILED: February 22, 1944, and April 16 and May 3 and 4, 1945, Northern District of California, Southern District of Ohio, and Western District of Washington.

ALLEGED SHIPMENT: Between the approximate dates of December 6, 1943, and March 21, 1945, by Lelord Kordel Products and Nutrition Enterprises, from Chicago, Ill.

PRODUCT: 134 packages of *Gotu Kola tablets*, 1,794 packages of *fenugreek tea*, 153 cartons of *Bolax tablets*, 104 cartons of *Garlic Plus tablets*, 239 cartons of *Papaya Plus tablets*, 184 cartons of *Ribotabs tablets*, 404 cartons of *Minerals Plus tablets*, 76 boxes of *sarsaparilla tea*, 209 cartons of *Everm wheat germ oil capsules*, 19 cartons of *Kordel tablets*, 242 cartons of *Ormotabs tablets*, 80 cartons of *Matto tablets*, 61 packages of *Cetabs tablets*, 411 packages of *Fero-B-Plex tablets*, 64 packages of *Kordel-A capsules*, and 41 packages of *Niamin tablets* at San Francisco, Calif., Cincinnati, Ohio, and Seattle, Wash.

Analyses disclosed that the *Papaya Plus tablets* consisted essentially of plant material containing oil of wintergreen and vitamin B₁, and that the *Matto tablets* consisted of powdered plant material. The results of analyses of the other products were essentially the same as the results of analyses reported in the preceding notice of judgment, No. 2580, with respect to the products of the same names involved therein.

NATURE OF CHARGE: *Gotu Kola tablets, fenugreek tea, Bolax tablets, Garlic Plus tablets, Ribotabs tablets, Minerals Plus tablets, sarsaparilla tea, Everm wheat germ oil capsules, Kordel tablets, Ormotabs tablets, Cetabs tablets, Fero-B-Plex tablets, Kordel-A capsules, and Niamin tablets. Misbranding,*

Section 502 (a), the labeling of these articles bore false and misleading statements which were similar to the false and misleading statements in the labeling of the products involved in the preceding notice of judgment, No. 2580. Further misbranding, Section 502 (a), the statements "A difference in medical opinion exists concerning the value of garlic tablets in easing distress of high blood pressure. In favor of such value are the opinions of experts qualified by scientific training to evaluate" displayed on the label of the *Garlic Plus tablets* were misleading since there is no difference of opinion among qualified experts as to the lack of value of garlic tablets for the relief of the distress of high blood pressure.

Papaya Plus tablets. Misbranding, Section 502 (a), certain statements in the labeling of the article were false and misleading. These statements represented and suggested that the article would be effective in assisting the digestion and assimilation of other foods; that it would be efficacious in the cure of scurvy and dysentery; that consumption of the article would make one strong and healthy; that the article would accomplish near-miraculous cures; that it possessed extraordinary nutritive values; that it would have a normalizing effect; that it would promote the generation and flow of salivary and gastric juices; that it would reduce superacidity of the stomach and relieve the symptoms of acidosis; that it would be efficacious in the treatment of excessive generation of gas on the stomach; that it was a valuable aid in digestion, particularly where normal digestion is impaired or disturbed; that it was a remedy for many ailments; and that it would be efficacious as a heart stimulant. The article would not be effective to fulfill the promises of benefit stated and implied.

Matto tablets. Misbranding, Section 502 (a), certain statements in the labeling of the article were false and misleading. These statements represented and suggested that the article would relieve that exhausted feeling; that it would enable one to endure long marches over periods of months with but very little and irregular food; that it was an exhilarating stimulant and diuretic; that it would enable one to pass days without solid food and suffer no great hunger; that it was a first-class stimulant and a general scorbutic tonic; that it would facilitate digestion and assist the functioning of the kidneys; and that it would be efficacious for nervous and excited persons. The article would not be effective to fulfill the promises of benefit expressed and implied. Further misbranding, Section 502 (a), the statements "As a dietary supplement * * * The need in human nutrition for Matto has not been officially established" displayed on the label of the *Matto tablets* were misleading since the article was not a nutritional factor and had no value as a dietary supplement.

The *Gotu Kola tablets*, *Ribotabs tablets*, *Minerals Plus tablets*, *Everm wheat germ oil capsules*, *Cetabs tablets*, *Fero-B-Plex tablets*, *Kordel-A capsules* and *Niamin tablets* were alleged also to be misbranded under the provisions of the law applicable to foods, as reported in notices of judgment on foods.

DISPOSITION: April 6, 1944, and August 11 and September 7, 1945. Default decrees of condemnation and destruction.

2582. Action for criminal contempt for violation of terms of injunction. U. S. v. Edgar H. Gremore. Plea of not guilty. Tried to the court; verdict of guilty. Sentence of 6 months in prison suspended and defendant placed on probation for 3 years. (Inj. No. 82.)

INFORMATION FILED: On or about December 21, 1948, Eastern District of Wisconsin, against Edgar H. Gremore, Florence, Wis.

NATURE OF CHARGE: That the defendant in willful disobedience of the decree of injunction against the introduction into interstate commerce of products misbranded under Section 502 (a) [See notice of judgment on drugs and devices No. 2306], shipped in interstate commerce to Stephenson, Mich., Oak Park, Ill., and Chicago, Ill., on or about November 29, 1945, and October 19 and 26, 1948, quantities of a product designated *Nature's Vegetation*, which was misbranded under Section 502 (a); and that by reason of such shipments, the defendant was in criminal contempt of the permanent injunction issued on June 11, 1945.

DISPOSITION: A plea of not guilty having been entered, the case came on for trial before the court on January 24, 1949. At the conclusion of the trial, the court found the defendant guilty of contempt and sentenced him to serve 6 months in prison. The sentence was suspended and the defendant was placed upon probation for 3 years on the condition that he abandon the sale and marketing of the product by any means whatsoever, whether interstate or intrastate.

2583. Misbranding of Frencos Papain, Frencos Pap-Tabs, New Minute Py-O-Ten, and Frencos Papaya Tooth Powder. U. S. v. Chester D. French (Frencos Laboratories). Plea of nolo contendere. Fine of \$105 and sentence of 6 months in jail; jail sentence suspended for 6 months and defendant placed on probation. (F. D. C. No. 17786. Sample Nos. 74297-F to 74299-F, incl., 29949-H to 29951-H, incl.)

INFORMATION FILED: On or about April 29, 1946, District of Arizona, against Chester D. French, trading as Frencos Laboratories, at Nogales, Ariz.

ALLEGED SHIPMENT: On or about October 17, 1944, and March 23, May 19, and August 13, 1945, from the State of Arizona into the State of California.

PRODUCT: Analyses showed that *Frencos Papain* and *New Minute Py-O-Ten* consisted essentially of plant material containing a milk-clotting enzyme, probably papain; that a portion of *Frencos Pap-Tabs* consisted essentially of compounds of calcium, magnesium, bismuth, and carbonate, together with some acid-insoluble matter and a milk-clotting enzyme, probably papain; that the remainder of *Frencos Pap-Tabs* consisted essentially of bismuth, calcium, and magnesium carbonates or oxides, papain, starch, and a trace of cerium; and that *Frencos Papaya Tooth Powder* consisted essentially of sodium, calcium, and magnesium carbonates and chlorides, papain, starch, and soap.

LABEL, IN PART: "Frencos Papain Powdered Absolute," "Frencos Pap-Tabs," "New Minute Py-O-Ten," and "Frencos Papaya Tooth Powder."

NATURE OF CHARGE: Misbranding, Section 502 (a), certain statements on the labels of the articles and in circulars entitled "Frencos Papain Powdered Absolute," "Frencos Laboratories of Nogales," and "Frencos Pap-Tabs" were false and misleading since the articles would not be effective for the purposes and would not fulfill the promises of benefits suggested and implied by the statements. The false and misleading statements represented:

That *Frencos Papain* when used as a vaginal douche solution material, it